



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 30, 1997

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR97-0209

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 104146.

The Travis County Judge (the "county judge") received a request for sixteen categories of information relating to the county's ordinance regulating sexually oriented businesses. You state that you have released most of the requested information to the requestor. However, you assert that some of the requested information is excepted from disclosure pursuant to sections 552.101, 552.103, and 552.107 of the Government Code. You have submitted only information for which the county judge is the custodian. You state that the "County Judge is not the officer for public records held by elected county officials or their employees," and "[t]herefore, the . . . open records request does not encompass information held by elected county officials." We have considered the exceptions you claim and reviewed the submitted documents.

The act requires an "officer for public information" of a governmental body to promptly produce public information. Gov't Code §§ 552.203, 552.221. The act generally does not require a governmental body to obtain information not in its possession from another entity or to obtain new information in order to comply with an open records request. See Open Records Decision Nos. 561 (1990), 558 (1990), 534 (1989). This is so with regard to county records in particular.

With regard to county records, Government Code section 552.201(b) reads as follows:

Each elected county officer is the officer for public information and the custodian, as defined by Section 201.003, Local Government Code, of the information created or received by that county officer's office.

Local Government Code section 201.003(2) defines "custodian" as:

the appointed or elected public officer who by the state constitution, state law, ordinance, or administrative policy is in charge of an office that creates or receives local government records.

We do not believe that the custodian for public information of one county entity serves as the custodian for public information held by any other county entity; a custodian's duty under the act to disclose public information applies only to information maintained by that custodian's office.¹ Furthermore, a governmental body's duty to obtain requested information from another entity only arises if that entity holds the information on behalf of that governmental body. See Open Records Decision No. 534 (1989) at 2. Thus, the act does not require the county judge to respond to requests for information that he does not have in his possession.

We now address whether the information in the county judge's possession and submitted for our review is excepted from disclosure. You contend that section 552.103 exempts the information contained in Exhibits A and C and the notations in Exhibit B. Section 552.103(a), the "litigation exception," excepts from required public disclosure information relating to litigation to which the state or a political subdivision is or may be a party. To show that section 552.103 is applicable, the county judge must demonstrate that 1) litigation is pending or reasonably anticipated, and 2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have submitted a petition from a lawsuit pending in the 201st District Court of Travis County and have shown that the requested information relates to the pending litigation. Thus, we conclude that Exhibits A and C and the notations in Exhibit B may be withheld based on section 552.103(a).

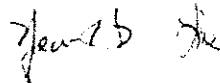
¹While we do not believe that a county public officer's duty extends to the production of information held by another county entity, this duty may exist if a requestor fails to correctly identify the "officer for public records" of a governmental body. The act requires a governmental body to respond to a request directed to any agent of the governmental body. See Open Records Decision No. 497 (1988) at 3; see also Local Gov't Code § 201.003(7) (defining "governing body" for purposes of Local Government Records Act, Local Gov't Code §§ 201.001, *et seq.*).

We note, however, that generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103, and it must be disclosed. Moreover, the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because we are able to make a determination under section 552.103, we do not address your other arguments against disclosure. However, some of the requested information may be confidential and may not be released even after the litigation has concluded. *See, e.g.,* Gov't Code § 552.101; Gov't Code § 552.117; Open Records Decision Nos. 600 (1992) (personal financial information), 611 (1992) (common-law privacy). *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). If the county judge receives a subsequent request for the information at issue, you should re-assert your arguments against disclosure.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

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Ref.: ID# 104146

cc: Mr. Randall Terrell
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(w/o enclosures)